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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Alexis Jean Mertens,

Plaintiff,

v.

Maricopa County Sheriff's Office, et al.,

Defendants.

No. CV-24-03219-PHX-JAT (MTM)

ORDER

On November 18, 2024, Plaintiff Alexis Jean Mertens, who was then confined in a Maricopa County Jail, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed In Forma Pauperis (Doc. 2). That same day, the Clerk of Court mailed Plaintiff a Notice of Assignment at her address of record. On December 4, 2024, the mail was returned as undeliverable because Plaintiff is no longer in custody. Plaintiff has not filed a notice of change of address or otherwise informed the Court of her whereabouts.

Plaintiff has the general duty to prosecute this case. *Fid. Phila. Tr. Co. v. Pioche Mines Consol., Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). In this regard, it is the duty of a self-represented plaintiff to keep the Court apprised of her current address and to comply with the Court's orders in a timely fashion. This Court does not have an affirmative obligation to locate Plaintiff. "A party, not the district court, bears the burden of keeping the court apprised of any changes in [her] mailing address." *Carey v. King*, 856 F.2d 1439, 1441

1 (9th Cir. 1988). Plaintiff's failure to keep the Court informed of her new address
2 constitutes a failure to prosecute.

3 Rule 41(b) of the Federal Rules of Civil Procedure provides that "if the plaintiff
4 fails to prosecute or to comply with these rules or a court order, a defendant may move to
5 dismiss the action or any claim against it." In *Link v. Wabash Railroad Co.*, 370 U.S. 626,
6 629-31 (1962), the Supreme Court recognized that a federal district court has the inherent
7 power to dismiss a case on its own for failure to prosecute, although the language of Rule
8 41(b) appears to require a motion from a party. Moreover, in appropriate circumstances,
9 the Court may dismiss a complaint for failure to prosecute without notice or a hearing. *Id.*
10 at 633.

11 In determining whether Plaintiff's failure to prosecute warrants dismissal of the
12 case, the Court must weigh the following five factors: "(1) the public's interest in
13 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk
14 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
15 merits; and (5) the availability of less drastic sanctions." *Carey*, 856 F.2d at 1440 (quoting
16 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). "The first two of these factors
17 favor the imposition of sanctions in most cases, while the fourth factor cuts against a default
18 or dismissal sanction. Thus the key factors are prejudice and availability of lesser
19 sanctions." *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990).

20 The first, second, and third factors favor dismissal of this case. Plaintiff's failure to
21 keep the Court informed of her address prevents the case from proceeding in the
22 foreseeable future. The fourth factor, as always, weighs against dismissal. The fifth factor
23 requires the Court to consider whether a less drastic alternative is available. Without
24 Plaintiff's current address, however, certain alternatives are bound to be futile. Here, as in
25 *Carey*, "[a]n order to show cause why dismissal is not warranted or an order imposing
26 sanctions would only find itself taking a round trip tour through the United States mail."
27 856 F.2d at 1441.

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1 The Court finds that only one less drastic sanction is realistically available. Rule
2 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon the
3 merits “[u]nless the dismissal order states otherwise.” The Court finds a dismissal with
4 prejudice would be unnecessarily harsh and, therefore, will dismiss the Complaint and this
5 action without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.
6 The Court will deny Plaintiff’s Application to Proceed In Forma Pauperis as moot.

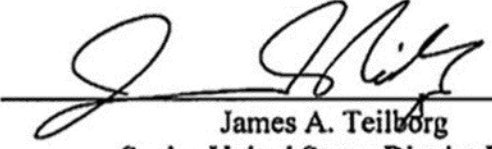
7 **IT IS ORDERED:**

8 (1) Plaintiff’s Application to Proceed In Forma Pauperis (Doc. 2) is **denied as**
9 **moot.**

10 (2) The Complaint (Doc. 1) and this case are **dismissed** without prejudice
11 pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute, and
12 the Clerk of Court must enter judgment accordingly.

13 Dated this 20th day of December, 2024.

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James A. Teilborg
Senior United States District Judge